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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SUPERSHUTTLE INTERNATIONAL,
INC., *et al.*,

Plaintiffs,
v.

PATRICK HENNING, *et al.*,

Defendants.

Civil No. 09cv1825 JAH(NLS)

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS [DOC. # 4]**

INTRODUCTION

Currently pending before this Court is the motion filed by defendants Patrick Henning and the Employment Development Department (collectively “defendants” or “EDD”) to dismiss the complaint filed by plaintiffs SuperShuttle International, Inc., SuperShuttle Franchise Corporation, SuperShuttle Los Angeles, Inc., Mini-Buss Systems, Inc., Sacramento Transportation Services, Inc., SuperShuttle of San Francisco, Inc. and Cloud 9 Shuttle, Inc. (collectively “plaintiffs”). The motion has been fully briefed by the parties. After a careful consideration of the pleadings and relevant exhibits submitted, and for the reasons set forth below, this Court GRANTS defendants’ motion to dismiss.

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BACKGROUND

Plaintiffs operate on-demand ride shuttle businesses in California. Doc. # 1 ¶¶ 2, 13-19. Plaintiffs filed the instant complaint on August 21, 2009, seeking declaratory and injunctive relief based on allegations concerning defendants' intended use of a "Taxicab Information Sheet." *See id.* ¶¶ 2-10, 53-55. Plaintiffs claim defendants' use of the Taxicab Information Sheet violates, or will violate, plaintiffs' rights under the Equal Protection Clause, the Due Process Clause and the Contracts Clause of the United States Constitution. *Id.* ¶ 11, 59, 103-122. The complaint also contains causes of action under state law. *See id.* ¶¶ 124-140.

Defendants filed the instant motion on September 17, 2009. Plaintiffs' opposition was filed on November 2, 2009 and defendants' reply brief was filed on November 5, 2009. This Court subsequently took the motion under submission without oral argument. *See CivLR 7.1(d.1)*. On May 25, 2010, plaintiffs submitted, with leave of court, supplemental authority in support of their opposition to the motion.¹ *See Docs. # 17, 18.*

DISCUSSION

Defendants move to dismiss the complaint on the ground that this Court lacks jurisdiction over the subject matter of this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.²

1. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(1), a defendant may seek to dismiss a complaint for "lack of jurisdiction over the subject matter." FED. R. CIV. P. 12(b)(1).

¹ This Court's review of the supplemental authority submitted by plaintiffs reveals that the case has no bearing on the issue of standing which is central to the Court's decision in this matter. The authority cited, Germantown Cab Co. v. Philadelphia Parking Authority, 2010 Pa. Commw. LEXIS 211 (April 28, 2010), involved a cab company that was fined after the Philadelphia Parking Authority implemented certain taxicab regulations upon it that were not promulgated in accordance with Philadelphia law. *Id.* at *9. Here, plaintiffs have not been fined and, as such, are not in the same position to seek relief as was the cab company in Germantown. Therefore, this Court finds plaintiffs' supplemental authority unpersuasive.

² Defendants also move, in the alternative, to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. However, because this Court ultimately finds it lacks subject matter jurisdiction over plaintiffs' claims, this Court does not address defendants' alternative motion.

1 “A motion to dismiss for lack of subject matter jurisdiction may either attack the
 2 allegations of the complaint or may be made as a ‘speaking motion’ attacking the existence
 3 of subject matter jurisdiction in fact.” Thornhill Publishing Co. v. General Telephone
 4 Corp., 594 F.2d 730, 733 (9th Cir.1979).

5 Where the motion to dismiss attacks the allegations of the complaint, the trial court
 6 “must accept as true all material allegations of the complaint, and must construe the
 7 complaint in favor of the complaining party.” Warth v. Seldin, 422 U.S. 490, 501 (1975).
 8 Further, where the question of jurisdiction is dependent on the resolution of factual issues
 9 going to the merits, the standard to be applied in determining whether a hearing is
 10 required is equivalent to that used under Rule 56(c) of the Federal Rules of Civil
 11 Procedure, in ruling on a motion for summary judgment. Augustine v. United States, 704
 12 F.2d 1074, 1079 (9th Cir.1983) That is, where genuine issues of material fact exist, they
 13 must be submitted to decision on the evidence. Id.

14 Where the motion to dismiss attacks the existence of subject matter jurisdiction in
 15 fact, “the judge may consider the evidence presented with respect to the jurisdictional issue
 16 and rule on that issue, resolving factual disputes if necessary.” Thornhill Publishing Co.,
 17 594 F.2d at 733. In such circumstances, “[n]o presumptive truthfulness attaches to
 18 plaintiff’s allegations, and the existence of disputed facts will not preclude the trial court
 19 from evaluating for itself the merits of jurisdictional claims.” Id.

20 2. Analysis

21 Defendants contend that subject matter jurisdiction is lacking because plaintiffs
 22 lack standing to sue.³ Plaintiffs bear the burden of demonstrating the existence of subject
 23 matter jurisdiction. See Tosco Corp. v. Communities for a Better Environment, 236 F.3d
 24 495, 499 (9th Cir. 2001). Plaintiffs also bear the burden of demonstrating that they have
 25 standing to pursue the claims presented in their complaint. See United States v. Hays, 515
 26 U.S. 737, 743 (1995). To satisfy constitutional standing requirements, plaintiffs must

27
 28 ³ Defendants also contend they are immune from suit under the Eleventh Amendment and the Tax Injunction Act bars this action. See Doc. # 4-2 at 1-6. However, because this Court ultimately finds plaintiffs lack standing to sue, this Court does not address these additional contentions.

1 prove that “(1) [they have] suffered an ‘injury in fact’ that is (a) concrete and
 2 particularized and (b) actual and imminent, not conjectural or hypothetical; (2) injury is
 3 fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed
 4 to merely speculative, that the injury will be redressed by a favorable decision.” Friends
 5 of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc., 528 U.S. 167, 180-81
 6 (2000)(citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)); see Council
 7 of Ins. Agents & Brokers v. Molasky-Arman, 522 F.3d 925, 930-31 (9th Cir. 2008). In
 8 addition to the constitutional requirements, certain prudential rules apply, including a
 9 prohibition on federal courts from being forums for hearing generalized grievances by
 10 taxpayers, and an allowance for standing premised on a plaintiff’s status as a taxpayer if
 11 certain requirements are met. See Bell v. City of Kellogg, 922 F.2d 1418, 1422 (9th Cir.
 12 1991).

13 Defendants claim that plaintiffs lack standing because they cannot show an injury
 14 in fact occurred here. Specifically, defendants point out plaintiffs “are arguing that the
 15 Taxicab Information Sheet *may* be used to have [p]laintiffs viewed as taxicabs [but] there
 16 has been no audit results, no assessment and no payment of any taxes by [p]laintiffs.”
 17 Doc. # 4-2 at 3. Therefore, defendants contend plaintiffs clearly have yet to suffer any
 18 harm. Id.

19 In opposition, plaintiffs contend they meet all three requirements establishing
 20 standing to sue here. Doc. # 7 at 11. Plaintiffs claim that, in addition to economic
 21 damages it will suffer should defendants use the Taxicab Information Sheet, plaintiffs
 22 claim they have suffered non-economic damages in that their due process rights have been
 23 violated by defendants’ failure to notify or afford plaintiffs an opportunity to be heard
 24 before the Taxicab Information Sheet was used. Id. at 11-12 (citing Council of Ins.
 25 Agents, 522 F.3d at 931 (“Impairments to constitutional rights are generally deemed
 26 adequate to support a finding of ‘injury’ for purposes of standing.”). Plaintiffs further
 27 claim that the causation requirement is met here because defendants’ acts have caused or
 28 will cause plaintiffs to be precluded from being able to rely on its licensing and franchise

1 agreements as sources of income. Id. at 12. Plaintiffs also claim that their injuries can
2 clearly be redressed by this Court's action. Id.

3 In reply, defendants explain that, because plaintiffs cannot meet the first
4 requirement of demonstrating an injury in fact, it does not matter whether plaintiffs meet
5 the remaining requirements. *See* Doc. # 8 at 3. Defendants point out that the injury
6 alleged by plaintiffs has not yet happened, that is, plaintiffs are seeking, by way of this
7 lawsuit, to enjoin defendants from using the Taxicab Information Sheet in the future. Id.
8 Thus, according to defendants, the record clearly indicates plaintiffs have suffered no
9 harm, economic or otherwise, because there is no dispute that the Taxicab Information
10 Sheet has yet to be implemented, if at all. Id.

11 This Court's review of the record reflects that defendants are correct. There is
12 nothing in the record to indicate that plaintiffs have suffered any harm because the
13 Taxicab Information Sheet, by plaintiffs' own admission, has not been implemented by
14 defendants to plaintiffs' detriment. Instead, plaintiffs claim they will suffer, sometime in
15 the future, harm through invalidation of licensing and franchise contracts if the Taxicab
16 Information Sheet is utilized. *See* Doc. # 7 at 11. This Court, therefore, finds that
17 plaintiffs have not suffered an injury in fact and, as such, lack standing to sue.
18 Accordingly, this Court grants defendants' motion to dismiss plaintiffs' complaint for lack
19 of jurisdiction.

20 CONCLUSION AND ORDER

21 For the reasons set forth above, this Court **GRANTS** defendants' motion to dismiss
22 plaintiffs' complaint [doc. # 4] and **DISMISSES** the complaint without prejudice.

23
24 DATED: August 31, 2010

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26 JOHN A. HOUSTON
27 United States District Judge
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